

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 Case No. **2010- 355**

12 In the Matter of the Accusation Against:

13 **MIRANDA MICHELLE WHITACRE**
21751 Rimrock Circle
14 Lake Forrest, CA 92630

A C C U S A T I O N

15 Registered Nurse License No. RN 737828
Public Health Nurse Certificate No. 74440

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about October 6, 2008, the Board of Registered Nursing issued Registered
24 Nurse License Number RN 737828 to Miranda Michelle Whitacre (Respondent). The Registered
25 Nurse License was in full force and effect at all times relevant to the charges brought herein, and
26 will expire on September 30, 2010, unless renewed.

27 3. On or about November 19, 2008, the Board of Registered Nursing issued Public
28 Health Nurse (PHN) Certificate No. 74440 to Miranda Michelle Whitacre (Respondent). The

PHN certificate was in full force and effect at all times relevant to the charges brought herein, and will expire on September 30, 2010, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration.'"

3 9. Section 2761 of the Code states:

4 "The board may take disciplinary action against a certified or licensed nurse or deny an
5 application for a certificate or license for any of the following:

6 "....

7 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
8 functions, and duties of a registered nurse, in which event the record of the conviction shall be
9 conclusive evidence thereof."

10 10. Section 2762 of the Code states in relevant part:

11 "In addition to other acts constituting unprofessional conduct within the meaning of this
12 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
13 chapter to do any of the following:

14 "....

15 "(b) Use . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to
16 himself or herself, any other person, or the public or to the extent that such use impairs his or her
17 ability to conduct with safety to the public the practice authorized by his or her license.

18 "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
19 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
20 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
21 of this section, in which event the record of the conviction is conclusive evidence thereof."

22 REGULATIONS

23 11. California Code of Regulations, title 16, section 1444, states:

24 "A conviction or act shall be considered to be substantially related to the qualifications,
25 functions or duties of a registered nurse if to a substantial degree it evidences the present or
26 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
27 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

12. California Code of Regulations, title 16, section 1445 provides:

“ . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

“(2) Total criminal record.

“(3) The time that has elapsed since commission of the act(s) or offense(s).

“(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

“(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

“(6) Evidence, if any, of rehabilitation submitted by the licensee.”

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(August 3, 2009 Criminal Conviction - DUI)

14. Respondent's license is subject to discipline under Code sections 490 and 2761, subdivision (f), in that on or about August 3, 2009, in the Superior Court, County of Orange, in

1 the case entitled *People of the State of California v. Miranda Michelle Whitacre* (Superior Court,
2 Harbor Justice Center, Newport Beach Facility, Case No. 09HMO4582), Respondent was
3 convicted by the Court on her plea of guilty to violating Vehicle 23152(b) driving with a
4 blood/alcohol content greater than 0.08%, a misdemeanor, a crime which is substantially related
5 to the qualifications, functions, and duties of a registered nurse.

6 15. The facts surrounding this conviction are as follows. In her plea form, Respondent
7 admitted that on May 9, 2009, in the county of Orange, she unlawfully drove a vehicle while
8 under the influence of an alcoholic beverage and with a blood alcohol level of .14%. On that day,
9 Respondent was driving on the 405 freeway when she was involved in a minor injury accident.
10 Respondent rear ended the same car on the freeway two times. The driver of the vehicle that
11 Respondent struck suffered minor injuries in the accident. There was a baby that was a passenger
12 in the car that Respondent struck. When the Officers arrived on the scene, she told them that she
13 must have fallen asleep at the wheel driving home from work. She admitted that she had had one
14 beer before she drove. Respondent was arrested for driving under the influence of alcohol.

15 16. On August 3, 2009, Respondent was sentenced to three years informal probation,
16 \$627.00 in fines and fees, and a level one first offender alcohol program, a MADD victim's
17 panel, victim restitution in an amount to be determined, and 15 days of community service.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Using Alcohol to an Extent Dangerous to Self and Others)**

20 17. Respondent's license is subject to discipline under Code section 2762, subdivision
21 (b), in that Respondent used alcohol to an extent dangerous to herself and others as set forth in
22 paragraphs 13 to 15 which are incorporated here by this reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Criminal Conviction Involving the Consumption of Alcohol)**

25 18. Respondent's license is subject to discipline under Code section 2762, subdivision
26 (c), in that Respondent was convicted of a criminal offense involving the consumption or self-
27 administration of alcohol as set forth in paragraphs 13 to 15 which are incorporated here by this
28 reference.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


1. Revoking or suspending Registered Nurse License Number RN 737828, issued to Respondent Miranda Michelle Whitacre.

2. Revoking or suspending Public Health Nurse Certificate No. 74440, issued to Respondent Miranda Michelle Whitacre.

3. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

4. Taking such other and further action as deemed necessary and proper.

DATED: 2/2/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2009804980